No. 91-762

IN THE
Supreme Court of the United States

October Term, 1991

HUGHES ANDERSON BAGLEY, JR.,

Petitioner-Plaintiff,

v.

NORMAN PRINS; JAMES P. O'CONNOR; DONALD E. MITCHELL; CMC REAL ESTATE CORP.; and THE SOO LINE RAILROAD,

Respondents-Defendants.

RESPONDENTS CMC REAL ESTATE CORPORATION AND THE SOO LINE RAILROAD'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

January 8, 1992

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SUMMARY

Bagley's Petition For Certiorari should be denied. None of the grounds for certiorari in Sup. Ct. R. 10 are present. The Ninth Circuit's decision is in accord with unanimous precedent from this Court and other jurisdictions. There is no conflict among jurisdictions that have addressed the issue in this case. Bagley's claim that the Ninth Circuit's decision conflicts with other precedent is based upon erroneous and strained interpretations of decisions which are unrelated to the issue in this matter. In addition, judicial economy and the policies behind statutes of limitations support the Ninth Circuit's decision.

This Brief responds to the specific points raised in Bagley's petition. For the Court's convenience, the arguments in this Brief are cross-referenced to the

portions of Bagley's brief to which they respond.

FACTS

A. Factual Background.

Defendants O'Connor and Mitchell are former security officers for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee Road"). (Complaint, copy attached in appendix, ¶ 17). Defendants CMC Real Estate Corp. ("CMC") and The Soo Line Railroad ("Soo") are successors in interest to the Milwaukee Road. (Complaint, ¶¶ 18-21). The Milwaukee Road entered reorganization proceedings in 1977, and emerged as the Soo and CMC in 1985. Defendant Prins is an agent for the Bureau of Alcohol, Tobacco and Firearms ("BATF"). (Complaint, ¶ 4).

In April 1977, Prins asked Mitchell and O'Connor to act as informants in an investigation of Bagley. Mitchell and

O'Connor agreed, and the Milwaukee Road approved. (Complaint, ¶¶ 23-25).

During the investigation, Mitchell and O'Connor had numerous contacts with Bagley. After each contact, they signed sworn declarations stating, among other things, that they did not expect any reward for aiding the Bagley investigation. (Complaint, ¶¶ 26, 27).

On May 3, 1977, Mitchell and O'Connor each signed a "Contract for Purchase of Information and Payment of Lump Sum Therefor" ("contracts"). Pursuant to these contracts, Mitchell and O'Connor each eventually received compensation for their work in the Bagley case. (Complaint, ¶¶ 29-31).

On May 11, 1977, Bagley was arrested for controlled substance and firearms violations. Prior to his trial, Bagley requested that the U.S. Government disclose all payments made or promises of

payments made to Mitchell and O'Connor. The U.S. Attorney in charge of the case was unaware that Mitchell and O'Connor had signed the contracts or received any payments. Thus, the U.S. Attorney told Bagley's defense counsel that no payments had been made or promised to either Mitchell or O'Connor. (Complaint, ¶¶ 35, 36, 37).

At his trial, Bagley did not seek to discredit Mitchell or O'Connor on the grounds that they had been promised pay for their work. (Complaint, ¶ 38). At the end of the trial, on December 23, 1977, Bagley was convicted of distribution of a controlled substance and sentenced to six months in prison and five years probation. (Complaint, ¶ 43).

Bagley served his sentence and was released on probation in June 1978. Two years later, in March 1979, Bagley was

arrested for firearms violations and imprisoned again.

In May 1980, while in prison, Bagley discovered that Mitchell and O'Connor had signed the contracts and received compensation for assisting in the investigation. (Complaint, ¶ 56). Bagley moved to vacate his conviction under 28 U.S.C. § 2255, alleging that the failure to disclose the contracts and the payments to Mitchell and O'Connor violated his Fifth and Sixth Amendment rights. (Complaint, ¶ 57). Bagley did not, however, file any claims against the present defendants.

On May 12, 1982, the trial court hearing Bagley's habeas motion found that O'Connor and Mitchell ". . . did expect to receive from the United States some kind of compensation, over and above their expenses for their assistance, although perhaps not for their testimony." See

Bagley v. Lumpkin, 719 F.2d 1462, 1463 (9th Cir. 1983). The court refused to vacate Bagley's conviction, however, on the ground that disclosure of the payments would not have altered Bagley's conviction. Id. at 1464.

On July 9, 1982, Bagley was released from jail.

On November 10, 1983, five years before Bagley filed this suit, the Ninth Circuit reversed the District Court's denial of Bagley's habeas motion, and also reversed Bagley's 1977 conviction. The Court's decision stated that failure to disclose the payments to Mitchell and O'Connor required an automatic reversal. Bagley v. Lumpkin, supra, 719 F.2d 1462 (9th Cir. 1983).

In January 1984, Bagley was again arrested, this time for violation of marijuana laws, and sent to prison a third time.

On July 2, 1985, the United States Supreme Court reversed the Ninth Circuit, and remanded the case with instructions to determine whether there was a reasonable probability that Bagley would not have been convicted if the payments had been disclosed. U.S. v. Bagley, 105 S. Ct. 3375, 3385, 87 L.Ed.2d 481, 473 U.S. 667 (1985). On September 2, 1986, the Ninth Circuit on remand confirmed its earlier reversal of the denial of Bagley's habeas motion and its reversal of Bagley's 1977 conviction. Bagley v. Lumpkin, 798 F.2d 1297 (9th Cir. 1986). On January 13, 1988, Bagley's 1979 conviction was vacated on the grounds that it was the result of Bagley's 1977 conviction. United States v. Bagley, 837 F.2d 371 (9th Cir. 1988).

B. Procedural Background.

Bagley filed this action in July 1988, over eight years after learning of the misconduct at his trial and filing his

habeas motion. Bagley's Complaint seeks damages in excess of $100 million for his wrongful conviction, imprisonment and the deprivations of that imprisonment. These damage claims are set forth in ¶¶ 103-138 of Bagley's Complaint.

Paragraphs 100-102 of Bagley's complaint set forth damage claims that are unrelated to his conviction and imprisonment. These include $3 million in punitive damages for the conspiracy to violate his Fifth and Sixth Amendment Rights (Complaint, ¶ 100). He also claims $20 million in actual damages and $20 million in punitive damages for the violation of his Fifth Amendment due process rights and his Sixth Amendment right to confront witnesses. (Complaint, ¶¶ 101, 102).

In June 1989, defendants moved for judgment on the pleadings on several

grounds, including expiration of the statute of limitations.

On November 1, 1989 the Honorable William L. Dwyer granted defendants' motions. The Ninth Circuit affirmed on June 22, 1991.

The primary issue in the appeal, and the issue that Bagley wishes this court to consider, is: when did Bagley's claims accrue for purposes of the statute of limitations? Bagley claims that his claim did not accrue until 1988, when his habeas proceedings ended. The respondents assert, and the Ninth Circuit ruled, that Bagley's claim accrued in 1980, when Bagley learned of all the facts supporting his claim. As is set forth below, certiorari should not be granted because the Ninth Circuit's decision is in accord with unanimous precedent from this Court and other jurisdictions, as well as sound policy considerations.

I.

THE NINTH CIRCUIT'S DECISION IS IN ACCORD WITH DEAKINS V. MONAGHAN AND DOES NOT CONFLICT WITH THE SUPREME COURT PRECEDENT CITED BY BAGLEY. (Rebutting pp. 7-11 of Bagley's brief).

There is no conflict between the Ninth Circuit's decision and precedent from this court. The Ninth Circuit's decision is in accord with Deakins v. Monaghan, 484 U.S. 193, 108 S. Ct. 523, 98 L.Ed.2d 529 (1988), the only Supreme Court decision pertaining to the issue in this case. The Supreme Court cases cited by Bagley are not on point.

A. The Ninth Circuit's Decision is in Accord with This Court's Decision in Deakins v. Monaghan.

Deakins v. Monaghan, 108 S. Ct. 523, 484 U.S. 193, 98 L.Ed.2d 529 (1988), is the only Supreme Court decision pertinent to the issue in this case. Deakins is analogous to this case and supports the

Ninth Circuit's decision. In Deakins, the plaintiffs sought monetary damages and equitable relief when law enforcement agencies allegedly seized their business records illegally during a criminal investigation. The District Court dismissed the claim on abstention grounds, citing Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L.Ed.2d 669 (1971). The Third Circuit reversed, holding that the District Court should have stayed, rather than dismissed, the suit. One of the reasons for the Third Circuit's rule was to protect plaintiffs against expiration of statutes of limitations.

In Deakins, this Court specifically approved of the rule, stating:

> In reversing the district Court's dismissal of the claims for damages and attorney's fees, the Court of Appeals applied the Third Circuit rule that requires a District Court to stay rather than dismiss claims that are not cognizable in the parallel state proceeding. 798

> F.2d, at 635, citing Crane v. Fauver, 762 F.2d 325 (CA3 1985), and Williams v. Red Bank Bd. of Ed., 662 F.2d 1008 (CA3 1981). The Third Circuit rule is sound. . . . [Footnote 7].
>
> * * *
>
> [Footnote 7] In both Crane v. Fauver, 762 F.2d 325, 329 (CA3 1985), and Williams v. Red Bank Bd. of Ed., 662 F.2d 1008, 1024, n. 16 (CA3 1981), the Court of Appeals recognized that unless it retained jurisdiction during the pendency of the state proceeding, a plaintiff could be barred permanently from asserting his claims in the federal forum by the running of the applicable statute of limitations.

Deakins, supra, 108 S. Ct. at 530, including n.7.

In addition, Justice White wrote a concurring opinion in Deakins that cited and approved of the Eighth Circuit's decision in McCurry v. Allen, 606 F.2d 795, 799 (8th Cir. 1979), rev'd on other grounds, 449 U.S.90, 101 S. Ct. 411, 66 L.Ed.2d 308 (1980), which adopts a similar rule:

> Moreover, dismissal might foreclose, on statute of limitations grounds, the subsequent pursuit of a damages action in federal court in the event that the state court holds that a violation of Constitutional rights took place. No doubt this is why Courts of Appeals which have applied Younger to damages actions have ordered stays, and not dismissals, of damages claims to which Younger applies [Footnote 1].
>
> [Footnote 1] See, e.g., McCurry v. Allen, 606 F.2d 795, 799 (CA8 1979), rev'd on other grounds, 449 U.S.90, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). . .

Deakins, supra, 108 S. Ct. at 531-532, including n.1.

Thus, precedent from this Court supports the Ninth Circuit's decision.

B. The Cases Cited by Bagley are Miscited and/or Distinguishable.

Further, the three Supreme Court decisions that Bagley cites are either miscited or distinguishable. Each of these cases is discussed separately below. None of these cases conflict with the

Ninth Circuit's decision or support Bagley's position.

1. Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172, 105 S. Ct. 3108, 87 L.Ed.2d 126 (1985). Williamson is unrelated to the issues in Bagley's case. Williamson involved a landowner's claim that certain local government land use decisions constituted a taking under the 5th Amendment. The Williamson Court held that the landowner's claim was not ripe. The decision was based upon the fact that the landlord had not received a "final decision" on the land use application and all variance possibilities and had not sought just compensation through available state procedures:

> Because respondent has not yet obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, nor utilized the procedures Tennessee provides for obtaining

just compensation, respondent's claim is not ripe.

* * *

Although "the question of what constitutes a 'taking' for purposes of the Fifth Amendment has proved to be a problem of considerable difficulty," (citation omitted), this Court consistently has indicated that among the factors of particular significance in the inquiry are the economic impact of the challenge to action and the extent to which it interferes with reasonable investment-backed expectations (citations omitted). Those factors simply cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question.

* * *

The Commission's refusal to approve the preliminary plat does not determine that issue; it prevents respondent from developing its subdivision without obtaining the necessary variances, but leaves open the possibility that respondent may develop the subdivision according to its plat after obtaining the variances. In short, the Commission's denial of approval does not

> conclusively determine whether respondent will be denied all reasonable beneficial use of its property, and therefore is not a final, reviewable decision.
>
> A second reason the taking claim is not yet ripe is that respondent did not seek compensation through the procedures the state has provided for doing so.

Williamson, supra, 105 S. Ct. at 3116, 3118-3119, 3120.

The Williamson court also noted that condemnation cases differ from other areas of law because there is the presumption that a governmental entity can impose some injury or diminution in value without any claim accruing:

> Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power.

Williamson, supra, 105 S. Ct. at 3123, quoting, Pennsylvania Coal Company v.

Mahon, 260 U.S. 393, 413, 43 S. Ct. 158, 67 L.Ed. 322 (1922).

There are no parallels between Williamson and Bagley's case. Bagley's claim is not for a taking by land use regulations. The issue in Bagley's case is the statute of limitations and not ripeness. Bagley's reliance on Williamson is misplaced.

2. United States v. Kubrick, 444 U.S. 111, 100 S. Ct. 352, 62 L.Ed.2d 259 (1979). Kubrick is a personal injury case which does not support Bagley's case. The dicta relied upon by Bagley reads as follows:

> We are unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause should receive identical treatment. That he has been injured in fact may be unknown or unknowable until the injury manifests itself; and the facts about causation may be in the control of the putative defendant, unavailable to the

> plaintiff or at least very difficult to obtain. The prospect is not so bleak for a plaintiff in possession of the critical facts that he has been hurt and who has inflicted the injury. He is no longer at the mercy of the latter.

Kubrick, supra, 444 U.S. at 122.

Here, Bagley knew of the respondent's alleged wrongful acts and of his alleged injury in 1980. He was in jail and had been deprived of the right of cross-examination. There were no facts in the defendants' possession that Bagley needed in order to bring his lawsuit. Kubrick does not support Bagley's claim.

3. United States v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 87 L.Ed.2d 481 (1985). Bagley's argument regarding his own prior case and "harmless error" fails because it is contrary to his own complaint. Bagley's argument implies that he would not have had a cause of action if the alleged misconduct had been found to

constitute "harmless error". Yet Bagley's complaint states the opposite. For example, paragraph 100 of his Complaint seeks recovery of $3,000,000 of punitive damages for the conspiracy to violate his constitutional rights. Bagley also seeks an additional $30,000,000 of damages for infliction of emotional distress (Complaint, ¶ 110), as well as, $50,000,000 for loss of reputation (Complaint, ¶ 109). Bagley's ability to pursue these claims did not depend upon the outcome of his habeas motion.

The proper course in Bagley's situation was the course mandated by the Ninth Circuit. If Bagley was concerned about pursuing his claims before the final decision on his habeas motion, filing and staying his complaint would have alleviated Bagley's concerns as well as put the respondents on notice of the claim.

Finally, Bagley's claim that the Ninth Circuit's decision will spawn a rash of frivolous suits which will clog the courts is unfounded. The simple answer is to stay the suits once they have been filed. This court has required this procedure in several instances in the past. See, e.g., Johnson v. Railway Express Agency, 421 U.S. 454, 44 L.Ed.2d 295, 95 S. Ct. 1716 (1975); Deakins v. Monaghan, 108 S. Ct. 523, 484 U.S. 193, 98 L.Ed.2d 529 (1988).

In short, this Court's decisions are in complete accord with the Ninth Circuit's decision in this case. There is no conflict between the Ninth Circuit and this court, and there is no reason to review the Ninth Circuit's decision.

II.

THE NINTH CIRCUIT'S DECISION IS IN ACCORD WITH UNANIMOUS CASE LAW FROM LOWER COURTS.
(Rebutting pages 12-16 of Bagley's petition.)

The Ninth circuit's decision is in accord with unanimous case law from other jurisdictions. Bagley's argument that there is a conflict among the lower courts is based upon inaccurate and misleading attempts to analogize to case law does not address the issue in this case. Every case addressing this issue agrees with the Ninth Circuit. No case addressing this issue supports Bagley's position. The cases cited by Bagley either do not stand for the propositions for which they are cited or are factually distinguishable. There is no conflict among the lower courts on this issue.

A. Every Case Addressing This Issue Agrees with the Ninth Circuit.

Case law from the Third, Fifth, Eighth, Ninth and Eleventh Circuits holds that statutes of limitations on § 1983 actions begin to run prior to exhaustion of habeas corpus proceedings. These cases

have arisen when prisoners filed § 1983 damage claims prior to filing habeas claims. In accordance with well established law, the courts required the prisoners to first exhaust their habeas remedies prior to commencing § 1983 actions. However, the courts also ordered that § 1983 actions be stayed, rather than dismissed, to prevent statutes of limitations on the § 1983 claims from expiring during the habeas proceedings.

Connor v. Pickett, 522 F.2d 585 (5th Cir. 1977), is a good example. In Connor the Fifth Circuit stated:

> There is a possibility that if Connor is required to seek habeas corpus relief his right to sue for damages under § 1983 may be extinguished by the expiration of the relevant Alabama statute of limitations. Therefore we direct the district court to take such steps as may be necessary to protect Connor's right to bring a § 1983 suit after he has exhausted his habeas corpus remedies. One way of accomplishing this result would be to stay the § 1983

> action pending the outcome of the state proceedings as the district court did in Mastrachio v. Ricci, . . .

Connor, supra, 522 F.2d at 587.

Other decisions from the First, Third, Fifth, Eighth, Ninth and Eleventh Circuits are in accord with this rule. See, e.g., Bailey v. Ness, 733 F.2d 279, 283 (3rd Cir. 1984); Richardson v. Fleming, 651 F.2d 366, 375 (5th Cir. 1981); McCurry v. Allen, 606 F.2d 795, 799 (8th Cir. 1979), reversed on other grounds, Allen v. McCurry, 449 U.S. 90, 66 L.Ed.2d 308, 101 S. Ct. 411 (1980); cf. Prather v. Norman, 901 F.2d 915, 918-919 (11th Cir. 1990) (reversing and remanding district court's sua sponte dismissal of claim on several grounds, including possibility that claim should have been stayed rather than dismissed); cf. Mastrachio v. Ricci, 498 F.2d 1257 (1st Cir. 1974), cert. denied, 420 U.S. 909

(1975) (court stayed § 1983 action pending completion of criminal appeal without discussing statute of limitations); Young v. Kenny, 887 F.2d 237, 240 (9th Cir. 1989).

In addition to these Circuit Court decisions, the Eastern District of Pennsylvania and the Supreme Court of Wyoming have dismissed § 1983 cases because the statutes of limitations expired during pendency of the plaintiffs' criminal appeals. In Drum v. Nasuti, 648 F. Supp. 888 (E.D. Pa. 1986), the plaintiff filed a § 1983 claim alleging the defendants committed perjury during his trial. The court held that the plaintiff's cause of action accrued when the plaintiff ". . . knew or had reason to know the injury that constitutes the basis of this action, . . .". This is the same standard applicable in this case. Under that standard, the court held that the

plaintiff knew of the perjury at the time it was committed and that the § 1983 claim accrued at that time, not when the court of appeals affirmed his conviction:

> [T]he date of accrual began when the plaintiff had reason to know of the alleged false testimony in his case.
>
> . . . I must reject plaintiff's argument that his claim was not ripe until the court of appeals denied his appeal from his criminal contempt conviction in the middle district on May 18, 1984 . . . The last act which Drum complains of causing his injury would have been during his criminal contempt proceedings, in June 1983, when he 'knew' from Reif's testimony of the conspiracy he claims. It was then that the statute of limitations accrued.

Drum, supra, 648 F. Supp. at 903.

The court also rejected an argument that the criminal appeal tolled the statute of limitations, stating that the proper procedure was to file and stay the § 1983 action:

> Nor can plaintiff argue that the reason he failed to file his

> Section 1983 was that the same issues were pending in another proceeding. (Citation omitted). Rather, in such a situation, the court would stay the civil rights proceeding until the criminal proceedings had run their course. Id. Thus, the statute of limitation also bars plaintiff's claims.

648 F. Supp. at 903-904.

In Lafferty v. Nichel, 663 P.2d 168 (Wy. 1983), the court held that the statute of limitations on the plaintiff's civil rights claims under § 1983 and § 1985 began running at the time of the plaintiff's arrest, confinement and prosecution and the accrual of his claims was not delayed until his conviction was overturned:

> Appellant filed the present civil action on November 27, 1981, more than two years after his arrest, imprisonment, and conviction, but within two years of the District Court's reversal of his conviction in municipal court.

* * *

> [Plaintiff] argues that the municipal court convictions effectively estopped him from pursuing his civil claims because of the implicit finding of probable cause in those convictions. Therefore, he contends that either the claims did not accrue until the reversal of his municipal court convictions or the convictions tolled the running of the statutes of limitations until such reversal.
>
> * * *
>
> In this case the actions giving rise to the alleged civil rights violations arose upon appellant's arrest, confinement, and prosecution in March of 1979. At that time, appellant had a cause of action which could be brought against appellees.

Lafferty, supra, 663 P.2d at 169-170.

In short, ample case law directly supports the Ninth Circuit's decision. Bagley neither addresses nor mentions these cases which are all in concurrence with the Ninth Circuit.

B. No Court has Ruled in Favor of Bagley's Position.

Further, no court from any jurisdiction that has addressed this issue holds, as Bagley opines, that a claim does not accrue until habeas corpus proceedings have ended. There is no case, from any jurisdiction, which addresses facts identical or closely analogous to the facts of this case to support Bagley's position. Bagley does not cite such a case and, as the Ninth Circuit noted (923 F.2d at 761; p. 8a of Bagley's Petition), none exists.

C. The Cases Cited by Bagley are Either Miscited or Distinguishable.

Bagley cites five cases which he argues are contrary to the Ninth Circuit's decision. Each of these cases is discussed below. None of them conflict with the Ninth Circuit's decision and none of them support Bagley's position.

1. Triplett v. Azordegan, 478 F. Supp. 872 (N.D. Iowa, 1977). There are

two insurmountable problems with Bagley's reliance on Triplett. First, Triplett was decided in a District Court in the Eighth Circuit. Subsequent to Triplett, the Eighth Circuit ruled that the statute of limitations begins running on § 1983 actions before habeas proceedings are finished. McCurry v. Allen, supra. In McCurry, the Eighth Circuit ordered that a § 1983 action be stayed, rather than dismissed, to prevent the expiration of the statute of limitations while the prisoner/plaintiff exhausted his criminal appeals. McCurry, supra, 606 F.2d at 799[1].

The second problem is that Bagley mischaracterizes Triplett. Triplett is

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[1]The Eighth Circuit's use of the word "tolling" at page 799 of the McCurry opinion is confusing in this context. Subsequent courts, including this court, have unanimously interpreted that word in the opinion to mean "running" or "expiration". See, e.g., Deakins v. Monaghan, 108 S. Ct. 523, 531-532, 484 U.S. 193, 98 L.Ed.2d 529 (1988) (J. White, concurring).

based entirely on collateral estoppel. In Triplett, the plaintiff was a former inmate who had confessed to a murder after being drugged. His criminal trial took place in 1955. During the criminal trial, the propriety and admissability of his drugged confession was addressed. In 1972, the court reversed its ruling on the propriety of the drugged confession, and reversed the conviction. Based upon that reversal, the plaintiff filed his § 1983 suit claiming that his rights had been violated because of the drugging.

The court ruled that the statute of limitations did not begin running on the § 1983 suit until 1972. It did so because the criminal trial court had specifically ruled that the drugged confession was proper, and this ruling would have estopped the plaintiff from claiming that his civil rights had been violated:

It is clear that the issues surrounding the confession were raised at trial and in post-trial motions, but failed to affect the conviction.

* * *

It is almost too evident to warrant comment that plaintiff, having been convicted of murder by virtue of a confession which in 1955 was deemed legal and admissible, could not have, at that time, pursued a § 1983 claim. (Citations omitted)

In fact, the Eighth Circuit Court of Appeals has recognized that issues determined at a criminal trial may estop the criminal defendant from relitigating them in a civil action based on § 1983. McNally v. Pulitzer Publishing Co., 532 F.2d 69 (8th Cir. 1976).

> It is well established that prior criminal proceedings can work an estoppel in a subsequent civil proceeding, so long as the question involved was "distinctly put in issue and directly determined" in the criminal action.

532 F.2d at 76.

The State District Court found that the conviction was based on the involuntary confession. The issue of voluntariness was

> sufficiently raised at the original trial to warrant estoppel until the court reversed the conviction in 1972.

Triplett, supra, 478 F. Supp. at 875.

Triplett is distinguishable because collateral estoppel does not apply in this case. The alleged misconduct at Bagley's criminal trial was neither addressed nor discovered at the time of Bagley's criminal trial. The ruling in Triplett is unrelated to the issue of when Bagley's claim accrued.

2. McNally v. Pulitzer Publishing Company, 532 F.2d 69 (8th Cir. 1976). For the same reasons, Bagley's reliance on McNally is erroneous. McNally is an Eighth Circuit case that was decided prior to McCurry v. Allen, supra. McNally is also a collateral estoppel case:

> In order to secure relief for the deprivation of the right to a fair trial, McNally must demonstrate that the alleged improper conduct in fact had that result. This issue,

> however, has already been decided adversely to him in the prior federal criminal prosecution and appeal. It is well established that prior criminal proceedings can work an estoppel in a subsequent civil proceeding, so long as the question involved was "distinctly put in issue and directly determined" in a criminal action. . . . McNally cannot now litigate again the fairness of his criminal trial.

McNally, supra, 532 F.2d at 76.

3. Prince v. Wallace, 568 F.2d 1176 (5th Cir. 1978). Prince is not pertinent for two reasons. First, Prince is a Fifth Circuit decision. The 5th Circuit decided Connor v. Picket, supra, before Prince, and Richardson v. Fleming, supra, after Prince, both of which agree with the Ninth Circuit's decision in this case. Second, the decisive issue in Prince was whether or not the one year statute of limitations applied. After it as determined that the one year statute was applicable, the

question of when the claim accrued became moot.

4. Jones v. Shankland, 800 F.2d 77 (6th Cir. 1986). Jones does not support Bagley's position. The Jones court noted that one of its previous decisions, Hadley v. Werner, 753 F.2d 514 (6th Cir. 1985), affirmed the dismissal of a § 1983 case on the ground that the plaintiff had not exhausted his habeas corpus remedies. As Bagley's brief mentions, the Jones court acknowledged that the Hadley decision "raised some question" regarding whether the § 1983 claim accrued before the habeas corpus proceedings ended. Bagley's brief fails to disclose, however, that the Jones court then questioned Hadley by referring to the Fornaris and Muskegon Theater cases, stating that those cases held it error to dismiss civil rights claims where abstention was appropriate:

> The specific relief accorded in Hadley would normally raise some question whether, therefore, the accrual of a petitioner's cause of action for damages based upon constitutional violations which also effected his liberty, would be suspended during the entire time necessary to pursue the habeas action to a successful conclusion. In another context, however, the Supreme Court in Fornaris v. Ridge Tool Co., 400 U.S. 41, 91 S. Ct. 156, 27 L.Ed.2d 174 (1970), and this Circuit in Muskegon Theaters, Inc. v. City of Muskegon, 507 F.2d 199 (6th Cir. 1974), held it error to have dismissed outright, even without prejudice, causes of action brought under the Civil Rights Act where it was determined that abstention pending the resolution of state proceedings was appropriate.

Jones, supra, 800 F.2d at 82-83.

Although Jones stated that there ". . . is logic and support for both positions, . . ." the Court's sua sponte questioning of Hadley is an implicit rejection of the case. Jones does not support Bagley's position and does not

conflict with the Ninth Circuit's decision in this case.

5. Schweitzer v. Consolidated Rail Corp., 758 F.2d 936 (3rd Cir. 1985), cert. denied, 106 S. Ct. 183 (1985). Schweitzer is inapplicable for several reasons. Schweitzer is an asbestosis case from the Third Circuit and the Third Circuit has already rejected Bagley's position in a decision that is factually on point, Bailey v. Ness, supra. Furthermore, the plaintiff in Schweitzer did not know he had been injured until he filed his claim. In 1980 Bagley knew that he had not cross-examined Mitchell and O'Connor because of the failure to disclose the payments. He also knew he was in jail.

6. Moeller v. State, 474 N.W.2d 728 (S.D. 1991). Moeller is distinguishable both legally and factually. Legally, Moeller construes South Dakota law, SDCL 21-32-2, not federal law. Factually,

Moeller involved procedural error, the trying of the defendant as an adult rather than a juvenile. The issue of how the defendant should have been tried was raised and decided upon at the trial court level. Like Triplett and McNally, the trial court's decision was controlling until it was overruled. In Bagley's case, the misconduct was not addressed (or even discovered) at the trial court level.

In short, unanimous case law supports the Ninth Circuit. No case addressing this issue supports Bagley. Bagley's attempt to portray this case as an illustration of conflict between the Ninth Circuit and other jurisdictions is not accurate. There is no conflict among jurisdictions on this issue.

III.

THE NINTH CIRCUIT'S DECISION IS NOT CONTRARY TO CASE LAW REGARDING COLLATERAL ESTOPPEL. (Rebutting pp. 17-19 of Bagley's brief.)

Bagley argument regarding collateral estoppel, summarized, is as follows. In May 1982 the District Court denied Bagley's habeas motion because the alleged misconduct ". . . would not have affected the outcome of the criminal prosecution." 719 F.2d at 1463. Bagley equates this to a ruling that the Respondents' alleged conduct was "harmless error." Bagley argues that he could not have recovered from the Respondents for "harmless error," and, therefore, that the District Court's decision on his habeas motion estopped him from proceeding.

Bagley's argument fails for at least four independent reasons. First, Bagley's argument is contrary to his own complaint. Many of Bagley's claims, such as conspiracy, emotional distress and harm to reputation (Complaint, ¶¶ 100, 109, 110), account for huge damage claims ($86,000,000), and were not dependant upon

reversal of Bagley's criminal conviction. These claims could not have been estopped or affected by the District Court's ruling on the habeas motion.

Second, even if the alleged misconduct was harmless error and no actual damages resulted, case law from this court allows both nominal and punitive damages for constitutional claims in appropriate circumstances. See, e.g., Carey v. Piphus, 435 U.S. 247, 55 L.Ed.2d 252, 266-267, 98 S. Ct. 1042 (1978). Although Bagley's Petition for Certiorari claims that he could not recover for harmless error, Bagley's Complaint alleges and seeks recovery of tens of millions of dollars of nominal and punitive damages.

Third, Bagley's conviction, and the District Court's denial of Bagley's § 2254 habeas motion, were reversed in the Ninth Circuit on November 10, 1983. Bagley v. Lumpkin, 719 F.2d 1462 (9th Cir. 1983).

Both the conviction and the denial of the habeas motion lost all collateral estoppel effect at that time. Yet Bagley still waited five years to file his complaint.

Fourth, the proper procedure would be for Bagley to file his civil rights action within the limitations period and ask the District Court to stay the action pending the outcome of his habeas motion. This procedure would have prevented any conceivable concern with collateral estoppel in Bagley's case and will prevent such concerns in the future.

IV.

SOUND POLICY CONSIDERATIONS SUPPORT THE NINTH CIRCUIT'S DECISION. (Rebutting pp. 19-25 of Bagley's brief.)

Strong policy considerations support the Ninth Circuit's decision. Bagley's policy argument is without merit. The current law requiring that actions be

filed and stayed satisfies the policies behind statutes of limitation as well as the policy interests raised by Bagley: judicial economy, the right of parties to be free from litigation that might be decided in a collateral matter, and permitting meritorious civil rights claims.

Requiring that claims be filed and stayed promotes judicial economy because no activity in the litigation will occur until the habeas proceeding is decided. The burden on the judiciary of receiving and staying complaints is nominal - this court has ordered the procedure in the past and referred to the burden as "minimal". See Johnson v. Railway Express Agency, 421 U.S. 454, 44 L.Ed.2d 295, 305, 95 S. Ct. 1716 (1975); see also, Deakins v. Monaghan, supra. Further, Bagley's dire prediction of "court clogging" is belied by the actual experience of the

courts. The current law in all jurisdictions which have addressed this issue is that complaints be filed and stayed, and there is no indication of any resulting court congestion.

Staying proceedings will prevent parties from expending resources on suits that are ultimately decided in collateral proceedings. The parties need only file a stipulated order staying the proceedings. In fact, expenses will be saved because defendants will have notice of suits in a timely manner. Thus, defendants will be able to preserve relevant evidence rather than having to dredge it up many years after the fact.

Staying the proceedings will have no effect on the rights to have meritorious claims decided.

Finally, staying proceedings satisfies all of the policies behind statutes of limitation, including

protecting parties' rights to have notice of claims, protecting parties from stale claims, and preventing the injustices and expense caused by the loss of evidence, memory lapses, death or disappearance of witnesses, and loss or destruction of documents, all of which inevitably result when parties are not given timely notice of claims.

Bagley's policy argument is based solely on preventing the nominal expense of filing and staying complaints. The "minimal" burden of staying complaints is far exceeded by the expense and injustice resulting from failing to give potential defendants notice and an opportunity to preserve evidence. This is particularly true since there is no statute of limitations for habeas actions. Under Bagley's position, there would be no statute of limitations for civil rights claims, since they would be tolled until

the plaintiff decided, at his/her whim, to initiate his/her habeas proceedings.

CONCLUSION

The Ninth Circuit's decision is in accord with unanimous case law from this and other courts. Sound policy considerations support these decisions. There is no conflict among courts that have addressed this issue. None of the considerations for certiorari in Sup. Ct. R. 10 are present in this case and Bagley's Petition for Certiorari should be denied.

Respectfully submitted this 5th day of January, 1992.

GRAHAM & DUNN

By _____
James C. Fowler

Attorneys for Respondents

APPENDIX

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HUGHES ANDERSON BAGLEY, JR., Plaintiff, vs. NORMAN W. PRINS, an Agent of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, in his Individual Capacity, and, JAMES P. O'CONNOR, and, DONALD E. MITCHELL, and CMC REAL ESTATE CORP., a Successor to the Chicago, Milwaukee, St. Paul and Pacific Railroad, and The Soo Line Railroad, a Successor to the Chicago, Milwaukee, St. Paul and Pacific Railroad, Defendants.	No. C88-1062 COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE UNITED STATES CONSTITUTION (BIVENS ACTION) AND TITLE 42 U.S.C. §1983 AND §1985

I

NATURE OF THE ACTION

¶1.) This is a civil suit for monetary damages and injunctive relief pursuant to the Fifth and Sixth Amendments to the United States Constitution (Bivens action) and Title 42 U.S.C. §1983 and §1985.

II

FACTS

¶2.) At all times relevant hereto, Plaintiff Hughes Anderson Bagley, Jr. (hereinafter "Plaintiff") was a citizen of the United States entitled to the protection of the United States Constitution.

¶3.) All acts performed by the individual Defendants Norman W. Prins (hereinafter "Prins"), James P. O'Connor (hereinafter "O'Connor") and Donald E.

Mitchell (hereinafter "Mitchell") occurred within the Western District of Washington.

¶4.) At all times relevant hereto, Defendant Prins was an agent of the Bureau of Alcohol, Tobacco and Firearms (BATF), a Bureau of the United States Treasury Department, stationed in Seattle, Washington.

¶5.) At all times relevant hereto, Defendant Prins was a federal law enforcement officer acting as an agent of the BATF.

¶6.) At all times relevant hereto, Defendant Prins was acting in concert with Defendants O'Connor and Mitchell.

¶7.) Defendant Prins is a resident of the State of Washington, residing at 23330 19th Place West, Brier, Washington within the Western District of Washington.

¶8.) At all times relevant hereto, Defendant O'Connor was a law enforcement officer commissioned by the State of Washington and was acting under color of state law.

¶9.) At all times relevant hereto, Defendant O'Connor was acting in concert with Defendants Prins and Mitchell.

¶10.) At all times relevant hereto, Defendant O'Connor was employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (hereinafter the "Milwaukee Road"), a predecessor to Defendants CMC Real Estate Corp. (hereinafter "CMC") and Soo Line Railroad (hereinafter "Soo Line"), as a state commissioned law enforcement officer and was acting in that capacity pursuant to instructions from his superiors at the Milwaukee Road.

¶11.) Defendant O'Connor is a resident of the State of Washington,

residing at 419 West Fulton Street, Seattle, Washington 98109, within the Western District of Washington.

¶12.) At all times relevant hereto, Defendant Mitchell was a law enforcement officer commissioned by the State of Washington and was acting under color of state law.

¶13.) At all times relevant hereto, Defendant Mitchell was acting in concert with Defendants Prins and O'Connor.

¶14.) At all times relevant hereto, Defendant Mitchell was employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., a predecessor to Defendants CMC and Soo Line, as a state commissioned law enforcement officer and was acting in that capacity pursuant to instructions from his superiors at the Milwaukee Road.

¶15.) Defendant Mitchell is a resident of the State of Washington,

residing at _____

within the Western District of Washington.

¶16.) At all times relevant hereto, the Milwaukee Road, a predecessor to Defendants CMC and Soo Line, was a corporation doing business within the State of Washington and maintained offices at First Avenue South and Massachusetts Street, Seattle, Washington, within the Western District of Washington.

¶17.) At all times relevant hereto, the Milwaukee Road, a predecessor to Defendants CMC and Soo Line, employed Defendants O'Connor and Mitchell as state commissioned law enforcement officer and supervised and approved of the actions of Defendants O'Connor and Mitchell complained of herein and giving rise to this action.

¶18.) Defendant Soo Line Railroad is a successor to the Milwaukee Road, having assumed the assets and undischarged liabilities of the Milwaukee Road pursuant to the Milwaukee Railroad Restructuring Act, Title 45 U.S.C. §901-§922 and an order of the United States District Court for the Northern District of Illinois issued on April 12, 1985.

¶19.) Defendant Soo Line is a corporation and maintains headquarters at Post Office Box 530, Minneapolis, Minnesota 55440.

¶20.) Defendant CMC is a successor to the Milwaukee Road, having assumed the non-railroad assets and undischarged liabilities of the Milwaukee Road pursuant to the Milwaukee Railroad Restructing Act, Title 45 U.S.C. §901-§922 and an order of the United States

District Court for the Northern District of Illinois issued on April 12, 1985.

¶21.) Defendant CMC is a corporation maintaining headquarters at 547 West Jackson Street, Chicago, Illinois 60606.

¶22.) Sometime in late 1976 or early 1977, Defendant Prins, acting as a federal law enforcement officer employed by the BATF, began an investigation of Plaintiff.

¶23.) In approximately April 1977, Defendant Prins solicited the services of Defendants O'Connor and Mitchell as informants to aid in Defendant Prins' investigation of Plaintiff.

¶24.) In approximately April 1977, Defendants O'Connor and Mitchell agreed to Defendant Prins' request for their services in assisting Defendant Prins' investigation of Plaintiff.

¶25.) Sometime in April, 1977, acting through Defendants O'Connor's and Mitchell's immediate supervisor, the Milwaukee Road, a predecessor to Defendants CMC and Soo Line, approved Defendants O'Connor's and Mitchell's assistance in Defendant Prins' investigation of Plaintiff while Defendants O'Connor and Mitchell were on company time and while using company facilities, including the Milwaukee Road offices at First Avenue South and Massachusetts Street in Seattle and a company vehicle.

¶26.) As part of their assistance in Defendant Prins' investigation of Plaintiff, Defendants O'Connor and Mitchell, in the presence of Defendant Prins, made sworn statements regarding their contacts with Plaintiff after each such contact.

¶27.) Each of the sworn statements referred to in ¶26 contained a disclaimer of any reward or expectation of reward by Defendants O'Connor and Mitchell for their participation in Defendant Prins' investigation of Plaintiff.

¶28.) As Defendants Prins, O'Connor and Mitchell well knew, the disclaimer of expectations of reward for Defendants O'Connor's and Mitchell's participation in Defendant Prins' investigation of Plaintiff contained in the sworn statements described in ¶26 and ¶27 were false.

¶29.) On May 3, 1977, prior to making the last of the sworn statements denying any expectation of reward for their assistance in Defendant Prins' investigation of Plaintiff, Defendants O'Connor and Mitchell, in the presence of

Defendant Prins, signed BATF Form 164-A's.

¶30.) BATF Form 164-A is a document entitled "Contract For Purchase of Information and Payment of Lump Sum Therefor".

¶31.) Beginning in approximately May, 1977, Defendants Prins, O'Connor and Mitchell conspired among themselves to violate Plaintiff's rights to Due Process and Confrontation of Witnesses, as guaranteed by the Fifth and Sixth Amendments to the United States Constitution, by concealing by means of the false sworn statements referred to in ¶26 and ¶27 the fact that Defendants O'Connor and Mitchell were to be paid for their services in Defendant Prins' investigation of Plaintiff in order to prevent Plaintiff from showing at trial that Defendants O'Connor's and Mitchell's

testimony was not credible because it had been paid for, thereby increasing the likelihood that Plaintiff would be wrongly convicted at trial and imprisoned as a result of that trial.

¶32.) The Milwaukee Road, a predecessor to Defendants CMC and Soo Line, failed to properly train and supervise Defendants O'Connor and Mitchell, as a result of which Defendants O'Connor and Mitchell were able to enter into and carry out the conspiracy to conceal their expectation of payments as described in ¶31.

¶33.) On May 11, 1977, as a result of the activities of Defendants Prins, O'Connor and Mitchell, Plaintiff was arrested by agent of the BATF.

¶34.) As a result of the activities of Defendants Prins, O'Connor and Mitchell, Plaintiff was indicted in the

Western District of Washington in case number CR77-330V.

¶35.) About one month prior to trial in case number CR77-330V, Plaintiff requested the United States government to disclose all rewards or promises of rewards to be paid to Defendants O'Connor and Mitchell for their participation in Defendant Prins' investigation of Plaintiff or their testimony at Plaintiff's trial.

¶36.) Acting in reliance on the sworn statements of Defendants O'Connor and Mitchell, made in the presence of and witnessed by Defendant Prins, Assistant United States Attorney Francis Jerome Diskin responded to Plaintiff's request described in ¶35 by advising Plaintiff's defense counsel that there were no payments or promises of payments to Defendants O'Connor and Mitchell.

¶37.) Had Assistant United States Attorney Francis Jerome Diskin known of the existence of the signed contracts providing for future payments to Defendants O'Connor and Mitchell which are described in §29, Diskin would have disclosed those documents to Plaintiff's trial counsel for use at trial in case number CR77-330V.

¶38.) Because of the sworn statements of Defendants O'Connor and Mitchell, witnessed by Defendant Prins, described in ¶26 and ¶27, denying any payment or promise of payment for Defendants O'Connor's and Mitchell's participation in Plaintiff's prosecution, Plaintiff's defense counsel did not cross examine Defendants O'Connor and Mitchell at trial in case number CR77-330V as to their motive for their testimony or

otherwise seek to discredit their testimony.

¶39.) On December 23, 1977, solely as a result of the testimony of Defendants O'Connor and Mitchell, Plaintiff was convicted of two felony counts of distribution of valium (diazepam) in violation of Plaintiff's rights of Due Process and Confrontation of Witnesses as guaranteed by the Fifth and Sixth Amendments to the United States Constitution.

¶40.) Between December 23, 1977 and January 20, 1978, solely as a result of the felony convictions described in ¶39, Plaintiff was subjected to a presentence investigation report by a United States Probation Officer.

¶41.) Solely as a result of the presentence investigation report referenced in ¶40, Plaintiff was

subjected to an invasion of his personal privacy by being required to disclose to a United States Probation Officer intimate details of his personal life, including but not limited to, details of his relationship with his former wife, the names of friends and business associates and his personal habits and finances.

¶42.) Solely as a result of the disclosures referenced in ¶41, Plaintiff's former wife, friends, business associates and family were interviewed by United States Probation Officers, resulting in further invasion of Plaintiff's right to privacy.

¶43.) On January 20, 1978, solely as a result of the conviction described in ¶39, Plaintiff was sentenced to a term of imprisonment of six months and a term of probation of five years.

¶44.) Solely as a result of the conviction set forth In ¶39, Plaintiff was imprisoned between January 20, 1978 and mid-June, 1978.

¶45.) Solely as a result of the conviction set forth in ¶39, from mid-June, 1978 through March, 1979, Plaintiff was subjected to limitations on his personal liberty by being subjected to probation and parole.

¶46.) Solely as a result of the conviction set forth in ¶39 and the probation and parole described in ¶43 and ¶45, Plaintiff was required to report to a United States Probation Officer and was required to disclose details of his personal life, resulting in further violation of Plaintiff's right to privacy.

¶47.) On March 30, 1979, solely as a result of information brought to the

government's attention solely as a result of the conviction described in ¶39 and the probation and parole described in ¶43 and ¶45, Plaintiff was again arrested by agents of the BATF and was charged in case number CR79-108M in the Western District of Washington.

¶48.) Solely as a result of the conviction described in ¶39 and the probation and parole described in ¶43 and ¶45, Plaintiff was denied his Constitutional right to bail in case number CR79-108M.

¶49.) Solely as a result of the conviction described in ¶39, Plaintiff was charged in case number CR79-108M with multiple counts of being a felon in receipt or possession of firearms.

¶50.) Solely as a result of the conviction set forth in ¶39, Plaintiff was forced to forego his right to testify

in his own behalf, as guaranteed by the Sixth Amendment to the United States Constitution, in order to prevent the jury from learning of the nature of that conviction.

¶51.) Solely as a result of the conviction set forth in ¶39, Plaintiff was convicted in case number CR79-108M of four counts of being a felon in possession or receipt of firearms.

¶52.) Because of the inability to testify in his own behalf described in ¶50, Plaintiff was convicted in case number CR79-108M of a single count of engaging in the business of selling firearms.

¶53.) On August 2, 1979, solely as a result of the conviction described in ¶39, Plaintiff was sentenced to an enhanced term of imprisonment in case number CR79-108M of twelve years.

¶54.) In February, 1980, solely as a result of the conviction described in ¶39, Plaintiff was ordered by the United States Parole Commission to serve a term of thirty months before parole, whereas had it not been for that conviction, Plaintiff would have been ordered to serve not more than eighteen months before parole.

¶55.) In April, 1986, solely as a result of the conviction described in ¶39, Plaintiff was ordered to serve a parole violator term of thirty four months by the United states Parole Commission, whereas had it not been for the conviction described in ¶39, Plaintiff would have been ordered to serve a term of not more than twenty six months.

¶56.) In May, 1980, as the result of a response to a request under the

Freedom of Information and Privacy Acts, Title 5 U.S.C. §552 and §552a, Plaintiff learned for the first time that the sworn statements described in ¶26 and ¶27 made by Defendants O'Connor and Mitchell in the presence of Defendant Prins in which Defendants O'Connor and Mitchell denied any payments or promises of payments for their part in Plaintiff's prosecution in case number CR77-330V were false because Defendants O'Connor and Mitchell had signed the BATF Form 164-A's described in ¶29 and ¶30 on May 3, 1977.

¶57.) On September 30, 1986, after more than six years of litigation, the United States Court of Appeals for the Ninth Circuit vacated Plaintiff's conviction in case number CR77-330V in Bagley v. Lumpkin, 798 F. 2d 1297 (9th Dir. 1986), ruling that the conviction had been obtained in violation of

Plaintiff's rights to Due Process and Confrontation of Witnesses, as guaranteed by the Fifth and Sixth Amendments to the United States Constitution.

¶58.) On January 13, 1988, the United States Court of Appeals for the Ninth Circuit vacated all counts of felon in possession or receipt of firearms in case number CR79-108M, United States v. Bagley, 837 F. 2d 371 (9th Cir. 1988), because those counts were the result of the unconstitutional conviction in case number CR77-330V. The Court of Appeals also found that Plaintiff had been subjected to an enhanced sentence because of that unconstitutional conviction.

III

JURISDICTION

¶59.) This Court has jurisdiction over this matter under the provisions of

Title 28 U.S.C. §1331 (a) because this action arises in part under the United States Constitution. The Court also has jurisdiction under Title 28 U.S.C. §1343 because this action is also based on violations of Title 42 U.S.C. §1983 and §1985.

IV

VENUE

Venue lies in this District pursuant to Title 28 U.S.C. §1391 (b) because this action arises from acts committed within the District and all individual defendants reside within the District.

V

CAUSES OF ACTION

¶61.) The conspiracy to violate Plaintiff's Constitutional rights to Due Process and Confrontation of witnesses

guaranteed by the Fifth and Sixth Amendments to the United States Constitution, as described in ¶31, is actionable as a violation of Title 42 U.S.C. § 1985, which prohibits two or more persons from conspiring to hinder or obstruct or defeat the due course of justice with intent to deny any citizen equal protection of the laws.

¶62.) The non-disclosure of information regarding the expectation of payments by Defendants O'Connor and Mitchell described in ¶36 (hereinafter "non-disclosure"), as evidenced by the contracts described in ¶29 and ¶30, which resulted from the conspiracy described in ¶31 and was concealed by the false sworn statements described in ¶26 and ¶27, constitutes a violation of Plaintiff's right to Due Process, as guaranteed by

the Fifth Amendment to the United States Constitution.

¶63.) The non-disclosure of information regarding the expectation of payments by Defendants O'Connor and Mitchell described in ¶36 (hereinafter "non-disclosure"), as evidenced by the contracts described in ¶29 and ¶30, which resulted in the conspiracy described ¶31 and was concealed by the false sworn statements described in ¶26 and ¶27, constitutes a violation of Plaintiff's right to Confront Witnesses, as guaranteed by the Sixth Amendment to the United States Constitution.

¶64.) The conspiracy set forth in ¶31 and the non-disclosure set forth in ¶36 resulted in Plaintiff's wrongful conviction in case number CR77-330V in violation of the Due Process and Confrontation clauses of the Fifth and

Sixth Amendments to the United States Constitution.

¶65.) The conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64 resulted in violation of Plaintiff's right to privacy by virtue of Plaintiff's being subjected to coerced disclosure of personal information during the course of the presentence investigation described in ¶40-¶42.

¶66.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully deprived of the Constitutional right to vote.

¶67.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and

¶64, Plaintiff was wrongfully deprived of the Constitutional right to associate with persons of his choice.

¶68.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully deprived of the Constitutional right of interstate travel.

¶69.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully deprived of the Constitutional right to own firearms.

¶70.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully subjected

to loss of his good reputation from being branded as a drug dealer.

¶71.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64 and the various losses of Constitutional rights set forth in ¶64-¶70, Plaintiff was wrongfully subjected to the intentional infliction of emotional distress of an extreme nature and for a period of several years.

¶72.) Solely as a result of the conspiracy set forth in ¶31, the non-disclosure set forth in ¶36 and the wrongful conviction set forth in ¶39 and ¶64, Plaintiff was falsely imprisoned as set forth in ¶43 and ¶44.

¶73.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff was wrongfully subjected to

loss of income in the amount of $5,000.00.

¶74.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff was wrongfully subjected to the loss of household goods, furnishings, clothing and other personal effects in the amount of $10,000.00.

¶75.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff was wrongfully subjected to the loss of his right of privacy in that his incoming and outgoing mail was inspected and read, his phone calls were monitored and his belongings and person were subjected to random searches.

¶76.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff was wrongfully subjected to embarrassment and humiliation from random strip searches, urinalysis and

breathalyzer testing and being transported in public places while chained and manacled.

¶77.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff Was wrongfully subjected to physical distress from being forced to subsist on sub-standard food and to sleep on a steel bunk bed without adequate mattress, resulting in an ulcer and back pain.

¶78.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff was wrongfully denied the ability to exercise his visitation and custody rights with his minor son.

¶79.) Solely as a result of the false imprisonment set forth in ¶72, Plaintiff was wrongfully subjected to the intentional infliction of extreme emotional distress from the false

imprisonment itself and from the various hardships described in ¶73-¶78.

¶80.) Solely as a result of the wrongful and unconstitutional conviction set forth in ¶39 and ¶64, plaintiff was wrongfully denied his Constitutional right to bail in case number CR79-108M ¶48.

¶81.) Solely as a result of the wrongful and unconstitutional conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully subjected to prosecution in case number CR79-108M as a felon in possession or receipt of firearms as set forth in ¶49.

¶82.) Solely as a result of the wrongful and unconstitutional conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully subjected to conviction on multiple counts of being a felon in

receipt or possession of firearms in case number CR79-108M, as set forth in ¶51.

¶83.) Solely as a result of the wrongful and unconstitutional conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully deprived of the right to testify in his own behalf at trial in case number CR79-108M, as set forth in ¶50.

¶84.) Solely as a result of the wrongful and unconstitutional-conviction set forth in ¶39 and ¶64 and the wrongful conviction as a felon in possession or receipt of firearms set forth in ¶82, Plaintiff was wrongfully subjected to false imprisonment in that he was wrongfully required to serve substantial additional time in custody as set forth in ¶54.

¶85.) Solely as a result of the false imprisonment set forth in ¶84,

Plaintiff was wrongfully subjected to loss of income in the amount of $20,000.00.

¶86.) Solely as a result of the false imprisonment set forth in ¶84, Plaintiff was wrongfully subjected to a violation of his Constitutional right of privacy in that his incoming and outgoing mail was inspected and read, his telephone calls monitored, and his person and belongings were subjected to random searches.

¶87.) Solely as a result of the false imprisonment set forth in ¶84, Plaintiff was wrongly subjected to humiliation and embarrassment from random strip searches, urinalysis and breathalyzer testing and being transported in public places while chained and manacled.

¶88.) Solely as a result of the false imprisonment set forth in ¶84, Plaintiff was wrongly subjected to physical distress from being forced to subsist on substandard food and to sleep on various inadequate beds, resulting in extreme back pain and an ulcer.

¶89.) Solely as a result of the false imprisonment set forth in ¶84, Plaintiff was wrongfully denied the ability to exercise his visitation and custody rights with his minor son.

¶90.) Solely as a result of the false imprisonment set forth in ¶84, Plaintiff was wrongfully denied the right to visit his aging grandparents, with whom he had an extremely close relationship, and was prevented from making a timely deathbed visit to his grandfather.

¶91.) Solely as a result of the false imprisonment set forth in ¶84, Plaintiff was wrongfully subjected to the intentional infliction of extreme emotional distress from the wrongful imprisonment itself and from the varIous deprivations set forth in ¶80-¶90.

¶92.) Solely as a reuslt of the wrongful conviction set forth in ¶39 and ¶64, Plaintiff was wrongfully subjected to false imprisonment by being required to serve additional time in custody as set forth in ¶55.

¶93.) Solely as a result of the false imprisonment set forth in ¶55 and ¶92, Plaintiff was wrongfully subjected to loss of income in the amount of $25,000.00.

¶94.) Solely as a result of the false imprisonment set forth in ¶55 and ¶92, Plaintiff was wrongfully subjected

to a violation of his Constitutional right to privacy in that his incoming and outgoing mail was inspected and read, his telephone calls were monitored, and his person and belongings were subjected to random searches.

¶95.) Solely as a result of the false imprisonment set forth in ¶55 and ¶92, Plaintiff was wrongfully subjected to humiliation and embarrassment from random strip searches, urinalysis and breathalyzer testing and being transported in public places while chained and manacled.

¶96.) Solely as a result of the false imprisonment set forth in ¶55 and ¶92, Plaintiff was wrongfully subjected to physical distress from being forced to subsist on substandard food and to sleep on various inadequate beds, resulting in extreme back pain and an ulcer.

¶97.) Solely as a result of the false imprisonment set forth in ¶55 and ¶92, Plaintiff was wrongfully denied the ability to exercise his visitation and custody rights with his minor son.

¶98.) Solely as a result of the false imprisonment set forth in ¶55 and ¶92, Plaintiff was wrongfully subjected to the intentional infliction of emotional distress from the wrongful imprisonment itself and from the various deprivations set forth in ¶93-¶97.

¶99.) Solely as a result of the wrongful conviction set forth in ¶39 and ¶64, the various false imprisonments set forth in ¶43, ¶44, ¶72, ¶84 and ¶92 and the loss of reputation set forth in ¶70, Plaintiff was wrongfully denied the opportunity to practice and advance in a profession, resulting in the future loss of wages in the amount of $1,000,000.

VI

RELIEF SOUGHT

¶100.) For the conspiracy to violate Plaintiff's rights to Due Process and Confrontation of Witnesses, as guaranteed by the Fifth and Sixth Amendments to the United States Constitution, described in ¶31 and ¶61, Plaintiff asks an award of punitive damages in the amount of $1,000,000.00 each from Defendants Prins, O'Connor and Mitchell.

¶101.) For the actual violation of Plaintiff's Fifth Amendment right to Due Process set forth in ¶62, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶102.) For the actual violation of Plaintiff's Sixth Amendment right to Confrontation of Witnesses set forth in ¶63, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶103.) For the wrongful conviction in case number CR7T-330V set forth in Plaintiff asks an award of actual damages in the amount of $1,000,000 .00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶104.) For the violation of Plaintiff's right to privacy set forth in ¶65, Plaintiff asks an award of actual damages in the amount of $1,000,000.00

each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶105.) For the wrongful denial of the Constitutional right to vote set forth in ¶66, Plaintiff asks an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶106.) For the wrongful deprivation of the Constitutional right of association set forth in ¶67, Plaintiff asks an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive

damages in the amount of $3,000,000.00 from each Defendant.

¶107.) For the wrongful deprivation of the Constitutional right of interstate travel set forth in ¶68, Plaintiff asks an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶108.) For the wrongful deprivation of the Constitutional right to own firearms set forth in ¶69, Plaintiff asks an award of actual damages in the amount of $5,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $5,000,000.00 from each Defendant.

¶109.) For the wrongful loss of reputation set forth in ¶70, plaintiff asks an award of actual damages in the amount of $5,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $5,000,000.00 from each Defendant.

¶110.) For the wrongful intentional infliction of emotional distress set forth in ¶71, Plaintiff asks an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶111.) For the false imprisonment set forth in ¶72, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins,

O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶112.) For the wrongful loss of income set forth in ¶73, Plaintiff asks an award of actual damages in the amount of $1,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $50,000.00 from each Defendant.

¶113.) For the loss of household goods, furnishings, clothing and other personal effects set forth in ¶74, Plaintiff asks an award of actual damages in the amount of $2,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $50,000.00 from each Defendant.

¶114.) For the violation of the Constitutional right to privacy set forth in ¶75, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶115.) For the embarrassment and humiliation set forth in ¶76, Plaintiff asks an award of actual damages in the amount of $5,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $5,000,000.00 from each Defendant.

¶116.) For the physical distress set forth in ¶77, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and

an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶117.) For the wrongful deprivation of parental visitation and custody rights set forth in ¶78, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶118.) For the wrongful intentional infliction of emotional distress set forth in ¶79, Plaintiff asks an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶119.) For the wrongful deprivation of the Constitutional right to bail set forth in ¶80, Plaintiff asks an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶120.) For the wrongful prosecution as a felon in possession or receipt of firearms set forth in ¶81, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶121.) For the wrongful convictions as a felon in possession or receipt of firearms set forth in ¶82, Plaintiff asks

an award of actual damages in the amount of $3,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶122.) For the wrongful deprivation of the Constitutional right to testify in his own defense in case number CR79-108N set forth in ¶83, Plaintiff asks an award of actual damages in the amount of $5,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $3,000,000.00 from each Defendant.

¶123.) For the wrongful false imprisonment set forth in ¶84, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC

and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶124.) For the wrongful loss of income set forth in ¶85, Plaintiff asks an award of actual damages in the amount of $4,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $50,000.00 from each Defendant.

¶125.) For the wrongful violation of Plaintiff's Constitutional right of privacy set forth in ¶86, plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶126.) For the wrongfully inflicted humiliation and embarrassment set forth

in ¶87, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶127.) For the wrongfully inflicted physical distress set forth in ¶88, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶128.) For the wrongful deprivation of visitation and custody rights set forth in ¶89, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the

amount of $2,000,000.00 from each Defendant.

¶129.) For the wrongful interference with Plaintiff's relationship with his grandparents set forth in ¶90, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶130.) For the wrongful intentional infliction of emotional distress set forth in ¶91, Plaintiff asks an award of actual damages in the amount of $2,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $2,000,000.00 from each Defendant.

¶131.) For the false imprisonment set forth in ¶92, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, 0'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶132.) For the wrongfully imposed loss of income set forth in ¶93, Plaintiff asks an award of actual damages in the amount of $5,000.00 each from Defendants Prins, 0'Connor, Mitchell CMC and Soo Line and an award of punitive damages in the amount of $50,000.00 from each Defendant.

¶133.) For the wrongful violation of Plaintiff's Constitutional right to privacy set forth in ¶94, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants

Prins, 0'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶134.) For the wrongfully inflicted humiliation and embarrassment set forth in ¶95, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, 0'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶135.) For the wrongfully imposed physical distress set forth in ¶96, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, 0'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶136.) For the wrongful deprivation of parental visitation and custody rights set forth in ¶97, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶137.) For the wrongful intentional infliction of emotional distress set forth in ¶98, Plaintiff asks an award of actual damages in the amount of $1,000,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo Line and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

¶138.) For the wrongful loss of future income set forth in ¶99 Plaintiff asks an award of actual damages in the

amount of $200,000.00 each from Defendants Prins, O'Connor, Mitchell, CMC and Soo and an award of punitive damages in the amount of $1,000,000.00 from each Defendant.

VII

OTHER RELIEF SOUGHT

¶139.) Plaintiff asks an award of costs and attorney fees in an amount such as the Court shall find reasonable.

¶140.) Plaintiff asks for an award of interest on the judgment in accordance with the laws of the State of Washington.

¶141.) Plaintiff asks for an order expunging all records which were created as a result of the wrongful conviction and false imprisonments set forth above, including but not limited to the entries caused on Plaintiff's Federal Bureau of Investigation "rap sheet", Plaintiff's

Federal Bureau of Investigation "Computerized Criminal History", record maintained by the Department of Justice, the Office of the United States Attorney for the Western District of Washington, the Federal Bureau of Prisons, the United States Parole Commission, the Federal Probation Service and an order directing the Federal Bureau of Investigation to send copies of Plaintiff's corrected Federal Bureau of Investigation "rap sheet" or "Computerized Criminal History" to all agencies or persons who have received that information since May 11, 1977.

VIII

JURY DEMAND

¶142.) Plaintiff demands that the case be tried to a jury.

DATED this 23rd day of June, 1988.

Hugh Anerson Bagley, Jr.
Plaintiff Pro Se
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Onawa, Iowa 51040